2728.

SUPREME COURT OF THE UNITED STATES.

No. 96.

ELIJAH PEALE, TRUSTEE, &c., OF THE LATE AGRICULTURAL BANK OF MISSISSIPPI, PLAINTIFF IN ERROR,

vs.

MARTHA PHIPPS AND MARY B. RICE, WIFE OF CHARLES RICE, BY HIM AUTHORIZED, &c.

IN ERROR TO THE CIRCUIT COURT, U. S., FOR THE EASTERN DISTRICT OF LOUISIANA.

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[GIDEON, Print.]

United States circuit court, fifth circuit and eastern district of Louisiana.

PHIPPS and RICE
vs.
ELIJAH PEALE, trustee. } No. 1,705.

Pleas and proceedings before the honorable circuit court, fifth circuit and eastern district of Louisiana, at a circuit court of the United States, in and for the fifth circuit, and district aforesaid, being the December term, 1848, of said court, held at the city of New Orleans, in the district aforesaid, on the eleventh day of January, A. D. eighteen hundred and forty-nine.

Be it remembered, that heretofore, to wit, on the 22d day of April, A. D. 1848, came Martha Phipps and Mary Rice, by their attorneys, Messrs. Prentiss & Finney, and filed the following petition in the clerk's office of said court, which reads in the words and figures following, to wit:

To the honorable judges of the fifth judicial circuit of the United States, holding session in the city of New Orleans, in and for the district of Louisiana.

The petition of Martha Phipps and Mary Bowers, wife of Charles Rice, who is authorized and assisted in this suit by her said husband Charles, all of whom are citizens of the State of Louisiana, and residents of the city of New Orleans, respectfully represents: That Elijah Peale, a citizen of the State of Mississippi, in his capacity of trustee and assignee of the President, Directors, and Company of the Agricultural Bank of Mississippi, a corporation created by the laws of Mississippi, and located, until the time of its dissolution as hereafter stated, at Natchez in said State of Mississippi, is justly indebted to your petitioners in the sum of thirty-four thousand dollars, for this, to wit:

That petitioners are, and have been ever since the day of 1839, the true and lawful owners of two undivided third parts of a certain lot or parcel of land, situate on Main street, in the city of Natchez, in the county of Adams, and State of Mississippi, more particularly described as follows: Beginning on Main street aforesaid, between Wall and Canal streets, at the corner of a lot belonging to the heirs of Samuel Postlethwaite, deceased; thence, along the northwestern side of Main street, west, to the line of a lot formerly owned by Adam Bower, and bequeathed by him to his widow for life; thence north, along the eastern boundary line of said last mentioned lot, to the line of a lot now owned by L. R. Marshal; thence, along said line, to the line of the lot aforesaid belonging to the heirs of Samuel Postlethwaite, deceased, and along said line, to the place of beginning.

The said lot being well known, in the city of Natchez, as the lot on which stands the City Hotel and its appurtenances. Your petitioners further state, that on said day of 1839, being owners of two

undivided third parts of said lot, they were expelled and removed from the possession and occupation thereof by the said President, Directors, and Company of the Agricultural Bank of Mississippi.

That on the day of these petitioners commenced an action of ejectment in the circuit court of the United States, for the southern district of Mississippi, against said Agricultural Bank, and others in possession; in which suit, at the November term, 1843, of said court, these petitioners recovered judgment against the defendants therein for said two undivided third parts of said lot. Whereupon, the defendants therein appealed to the Supreme Court of the United States; which court, after due proceedings had, on the day of affirmed the judgment in favor of petitioners. And thereupon, your petitioners sued out, upon their said judgment, a writ of habere facias possessionem; under which, on the day of May, 1847, they took possession of the two undivided third parts of said lot, which they have ever since peaceably held and enjoyed. Petitioners further say, that from the time they were expelled and removed from the possession of their said interest and property in said lot, in 1839, they have been kept illegally out of the possession and occupation thereof, and from the receipt and enjoyment of the rent and profits thereof, by said Agricultural Bank, until they obtained possession in May, 1847, as aforesaid.

That said Agricultural Bank, since their illegal possession as aforesaid, to wit, from the said day of 1839, until the day of May, 1847, have enjoyed, received, and appropriated to their own use, all the rents, issues, and profits of said lot and premises; which rents, issues, and profits were of the yearly value of six thousand dollars; and the portion to which your petitioners were and are entitled, were of the yearly value of four thousand dollars; all of which petitioners claim and demand of defendants, together with interest, at the rate of eight per cent. per annum, upon the yearly rents from the time they respectively accrued.

Petitioners further state, that since the said Agricultural Bank have been in the possession of said lot and appurtenances, they have, by their wilful neglect, bad management, and gross carelessness, caused great and irreparable damage and injury to said property. That they have failed to have the proper and necessary repairs put upon the buildings; by reason whereof the same have become greatly dilapidated, and the whole property much diminished in value. And petitioners aver, that by reason of the wilful neglect, carelessness, and bad management of said defendants, their agents and tenants, they have been damaged, and suffered injury, in the two-thirds of said premises belonging to them, to the amount of ten thousand dollars; which sum they, in like manner, demand and claim of said defendants, for their damages sustained as aforesaid.

Petitioners further state, that in the prosecution of their said proceedings in their action of ejectment aforesaid, and in said appeal, and in the defence of said suit for an injunction, instituted by defendants and others against these petitioners as aforesaid, they have incurred great

expense and costs, and were compelled to disburse and pay out large sums of money, in all amounting to ten thousand dollars.

Wherefore, petitioners charge that said defendant is liable, as trustee and assignee as aforesaid, and bound in law to pay to them said ten thousand dollars.

Petitioners further state, that on the day of by a decree and judgment of the circuit court of Adams county, in said State of Mississippi, a court of competent power and jurisdiction in the premises, the charter of said President, Directors, and Company of the Agricultural Bank of Mississippi was declared forfeited; and the said corporation, by virtue of said judgment and decree, was dissolved, ceased to exist, and no longer does exist.

Petitioners further state, that by the order, judgment, and decree of said court the said defendant, Elijah Peale, was appointed trustee and assignee of said President, Directors, and Company of the Agricultural Bank of Mississippi, and accepted the trust, and is now the sole legal representative of said defunct corporation.

And petitioners aver and state, that by reason of said appointment by the decree and order of said court, and by operation of law, all the assets and property of said corporation vested in said defendant as assignee, as aforesaid; and by reason thereof he became liable, and is liable, to the creditors of said corporation to the extent of the assets which have or may come to his hands.

Petitioners further state, that property and assets of the said corporation have come into the hands and possession of said defendant, and are still in his possession, amply sufficient to pay all the debts of said corporation.

And petitioners aver, that said defendant, Elijah Peale, as trustee and assignee as aforesaid, is in law liable and bound to pay to your petitioners the sum of thirty-four thousand dollars above demanded, due to them by the said President, Directors, and Company of the Agricultural Bank of Mississippi, for damages, rents, and mesne profits, as aforesaid.

Petitioners further state, that they have made amicable demand of the said defendant, and have presented to him, and demanded payment of, the account hereto annexed and made part of this petition. But said defendant positively refused to pay any part of said account and claim, or to acknowledge the same, and still refuses.

Wherefore, the premises considered, petitioners pray that defendant, Elijah Peale, be duly cited, and that after due proceedings had, he be compelled and decreed to pay your petitioners, out of the assets of the Agricultural Bank in his hands, the sum of four thousand dollars for each and every year since the day of 1839, until the 22d of May, 1847, as rents, issues, and mesne profits for their undivided two third parts of said City Hotel, and as damages for the trespass committed by said Agricultural Bank in turning and keeping them out of possession as aforesaid, with interest, at the rate of 8 per cent. per annum, upon each year's rent from the time it accrued. Also ten thou-

sand dollars, as per account annexed, for costs, expenses, and counsel fees, &c., incurred in conducting said ejectment, and in defending said appeal, and other proceedings had by said Agricultural Bank.

Petitioners further pray, that defendant pay costs of this suit; and they ask also for general relief.

PRENTISS & FINNEY,
Plaintiffs' attorneys.

Account.

(Referred to in petition.)

The President, Directors, and Company of the Agricultural Bank of Mississippi. To Martha Phipps and Mary Rice, debtor, 22d May, 1847.

To damages and mesne profits due at this date, for the wrongful and illegal possession and detention of the lot of land and the appurtenances, situate in the city of Natchez and State of Mississippi, and known as the "City Hotel," from the day of 1839, to the 21st day of May, 1847. The interest of said Martha Phipps and Mary Rice being the undivided [two] third parts, and their damages, for the trespass and illegal detention, being estimated at $3,000 per annum - - - - - - -	$24,000
22d May, 1847.	
To expenses, costs, and counsel fees incurred in prosecuting an action of ejectment against said Agricultural Bank for two-thirds of said City Hotel, and in defending the judgment obtained against said Agricultural Bank, upon appeal to the Supreme Court of the U. S., and in defending a suit in chancery brought by said bank enjoining said judgment - -	10,000
Total amount due - - - -	$34,000

The foregoing account is presented by Martha Phipps and Mary Rice, to J. A. Van Hoesen and C. L. Dubuisson, commissioners, trustees of the Agricultural Bank, and they demand that the above sum of $34,000 be audited and allowed by the assignees as a just claim against said bank.

MARTHA PHIPPS & MARY RICE,
By their attorneys, PRENTISS & FINNEY.

Demand.

To Elijah Peale, trustee of Agricultural Bank, in behalf of Martha Phipps and Mary Rice: We hereby demand of you, as trustee of the Agricultural Bank, the payment of the within account of thirty-four thousand dollars, and if you cannot pay the same, that you acknowledge the claim as good and valid.

New Orleans, 20th April, 1848.

PRENTISS & FINNEY,
Attorneys for Martha Phipps and Mary Rice.

Citation and marshal's return.

The President of the United States of America, to the marshal of the district of Louisiana, or his lawful deputy, greeting:

MARTHA PHIPPS and Mary Rice
vs.
ELIJAH PEALE, trustee, &c. } No. 1705.

You are hereby commanded to summon Elijah Peale, trustee, &c., citizen of the State of Mississippi, to comply with the demand of Martha Phipps and Mary Rice, citizens of the State of Louisiana, contained in the petition, of which a copy accompanies this citation, or to deliver his answer to the same in the office of the clerk of the circuit court of the United States, fifth judicial circuit and district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default; which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held. And that you make due return hereof on the first Monday of June, 1848.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, in the said district of Louisiana, this twenty-second day [L.S.] of April, in the year of our Lord one thousand eight hundred and forty-eight, and of the independence of the United States of America the 72d year.

ED. RANDOLPH, *Clerk*,
By J. Q. A. HOIT, *Deputy Clerk*.

Marshal's return.

Received this 22d day of April, 1848, and on the 22d day of April, 1848, served copies of the within citation and plaintiffs' petition and documents annexed, on the within named Elijah Peale, trustee, &c., in the manner following, to wit, by handing the same to him in person, at his office, in the city of New Orleans.

Returned, April 25th, 1848.

JOS. PRADOS, Jr., *Dy. U. S. Marshal.*

Exception and answer.

MARTHA PHIPPS and Mary Rice
vs.
E. PEALE, trustee, &c. } No. 1705.

Circuit court for the district of Louisiana.

Now comes Elijah Peale, trustee of the Agricultural Bank of Mississippi, and excepts to the rights of the plaintiffs to have and maintain their action against him, on the grounds following:

1st. Because all the parties in interest are not joined as plaintiffs.

2d. Because the charter of the Agricultural Bank was declared forfeited, and the said bank put in a course of liquidation as an insolvent corporation, and this defendant appointed trustee for the purpose of collecting the assets thereof, by the circuit court of Adams county, in the State of Mississippi, under and in virtue of a law of said State of Mississippi, and such trustee is not amenable to any other court than the one that appointed him, and of which he is the officer; and this court has no jurisdiction, whatever, of him in his said capacity.

3d. Because by an act of the legislature of the State of Mississippi, approved 28th February, 1846, a board of commissioners was created for the express purpose of examining and auditing all claims against the said Agricultural Bank, as well as other banks in a course of liquidation, and directing the trustees to pay only such accounts or claims as should be by said board duly audited. That the commissioners for the Agricultural Bank have been only appointed and acting for some time past. And the plaintiffs can only prosecute their claim in that way.

4th. Because the said plaintiffs have recognised the authority of the said commissioners by presenting their claim to them, which has been refused, and the recourse properly is to oppose the report of the said commissioners, when made to the circuit court of Adams county, in which the affairs of the said insolvent corporation are being liquidated.

5th. Because the said plaintiffs cannot maintain a suit for expenses, costs, (not costs of court,) and counsel fees incurred in prosecuting the suit for the recovery of the said property.

Wherefore defendant prays to be herein dismissed.

But if these exceptions are overruled, and not otherwise, the said Peale, as trustee, files the following answer and reconvention:

This respondent denies generally all the allegations in plaintiffs' petition contained, and specially their right of recovery herein, and that he ever received any rents or profits from the said property, or caused the plaintiffs any damage.

And this respondent further answering avers, that during the entire period during which the Agricultural Bank had possession of the said property, and received the rents thereof, the said house or hotel was fully furnished and supplied with all the household furniture, &c., necessary for the prosecution of the business of hotel keeping, and that was a great part of the consideration of the rent paid by the tenants for the said property.

And respondent further avers, that while the said property was in the possession of the said bank, and those from whom they derived title and purchased the said property improvements, embracing the entire building, kitchen, &c., constituting the hotel, with the necessary out-houses and stables were put on the said property, and were, and are, of the value of one hundred thousand dollars. That when the plaintiffs were ousted or dispossessed of said property, there were no improvements whatever on the same; that by the law of Mississippi and Louisiana, the said bank was, and this respondent is, entitled to be paid the value of said improvements; wherefore he prays that the claim of the plaintiffs

be dismissed, and that he be allowed to reconvene, and plaintiffs cited to answer this reconvention and condemned to pay respondent the sum of $66,666 66⅔ dollars and costs, and for general relief, &c.

ROB'T MOTT..

Plea of prescription.

MARTHA PHIPPS and Mary Rice
vs.
ELIJAH PEALE, trustee. } No. 1705.

The defendant now pleads prescription to the entire claim, and claims of the plaintiffs; and prays to be hence dismissed with his costs, &c.

RO. MOTT, *Atty.*

Admission of counsel.

MARTHA PHIPPS and Mary Rice
vs.
ELIJAH PEALE, trustee of Agricultural Bank.

In the circuit court of the United States, district of Louisiana.

It is agreed between the parties in the above named suit, by Prentiss and Finney, attorneys for the plaintiffs, and Robert Mott, attorney for the defendant, that the following facts shall be admitted upon the trial of the cause, and the same are hereby admitted:

1st. That the president, directors, and company of the Agricultural Bank of Mississippi were in possession of the City Hotel, being the premises, the mesne profits of which are sued for on the 1st day of December, 1839.

2d. It is admitted, that the said hotel and furniture rented from said 1st day of December, 1839, until the 1st November, 1842, for the sum of six thousand dollars per annum; and from said 1st November, 1842, until plaintiff took possession at the rate of four thousand dollars per annum; and that said rates shall be considered as the fair annual rent of said property, during such periods.

3d. It is admitted, that the charter of the Agricultural Bank has been adjudged forfeited under the laws of Mississippi, and that the defendant, Elijah Peale, is the trustee appointed under and by virtue of said laws to represent said corporation.

4th. It is admitted that the claim sued on was, before the commencement of this suit presented to the commissioners appointed in Mississippi to audit and allow claims against said bank, to wit, to J. A. Van Hoesen and C. L. Dubuisson, and they were requested to audit and allow the same, but that they refused to audit, allow, or any way recognise the same.

5th. It is admitted that the claim sued on was, before the commencement of this suit, presented to the defendant as trustee of said Agricultural Bank, and he was requested to allow the same as a just and valid claim against said bank; but that said defendant, as trustee as aforesaid, refused to admit, recognise, or allow said claim, or any part thereof.

6th. It is admitted, that the fees of counsel employed by the plaintiffs in the prosecution of the suit of ejectment against the Agricultural Bank for the recovery of the said City Hotel, in the circuit court and Supreme Court of the United States, exceeded in value the sum of two thousand dollars, and that said sum of 2,000 dollars would be a reasonable fee for the conduct of said suit from its commencement to its termination.

It is admitted that the furniture of the house, &c., on the premises, formed part of the rent, in the proportion of one-fourth to three-fourths thereof.

It is admitted that the charter of the bank was declared forfeited by law, and the assets of the bank put in the possession of the defendant, who still holds the same as trustee or representative.

ROB'T MOTT, *Att'y.*
PRENTISS & FINNEY, *for Pl'ffs.*

It is further admitted, that the Agricultural Bank had stopped specie payments previous to the time of the forfeiture of the charter, and did not afterwards resume.

PRENTISS & FINNEY, *Pl'ffs' Att'ys.*

And afterwards, to wit, on the 11th day of January, A. D. 1848, the following order was entered upon the minutes of said court, which reads in these words and figures, to wit:

MARTHA PHIPPS and MARY RICE
vs.
ELIJAH PEALE, trustee, &c. } No. 1705.

The trial of this case being assigned for this day, appeared in court this day the respective parties, plaintiffs and defendant, by their counsel.

The exceptions filed by defendant were first taken up, and, after argument of counsel, submitted to the court; whereupon, the court ordered that the same be, and is hereby, overruled.

The trial was then proceeded in on the merits of the case; when, after adducing evidence, and argument of counsel, the cause being submitted, the court took time to consider.

Judgment.

MARTHA PHIPPS and MARY RICE
vs.
ELIJAH PEALE, trustee of the Agricultural Bank. } No. 1705.

This cause came on to be heard, and was argued by counsel; and, the law and the evidence being in favor of the plaintiffs, it is ordered, adjudged, and decreed, that the plaintiffs, Martha Phipps and Mary Rice, do recover of the defendant, Elijah Peale, trustee and representative of the late President, Directors, and Company of the Agricultural Bank of Mississippi, the sum of twenty thousand and fifty-eight dollars,

with interest thereon at the rate of five per cent. per annum from this date until paid; and that they have execution therefor upon the property, assets, goods and chattels, rights and credits, of the said President, Directors, and Company of the said Agricultural Bank of Mississippi, in the hands of the said defendant as trustee and representative, as aforesaid, or which may hereafter come to his hands. It is further ordered, adjudged, and decreed, that defendant pay the costs of this suit.

Judgment rendered 24th January, A. D. 1849.

Signed 31st January, 1849.

THEO. H. McCALEB, [L. S.]
U. S. Judge.

And afterwards, to wit, on the 26th day of January, A. D. 1849, this order was entered upon the minutes of said court, which reads in the words and figures following, to wit:

M. PHIPPS and M. Rice
vs.
ELIJAH PEALE, trustee. } No. 1705.

On motion of Robert Mott, of counsel for defendant, it is ordered, that plaintiffs show cause, on Saturday, the 27th instant, at 10 o'clock, a. m., why the judgment rendered herein shall not be set aside, and a new trial granted, on the grounds and for the reasons following, to wit:

1st. Because the judgment does not allow for the improvements made on the property while in the possession of the Agricultural Bank, but gives a judgment for the gross rents of the property.

2d. Because the interest is allowed on the rents and the profits.

3d. Because a great part of plaintiffs' claim is prescribed by the prescription of three years.

4th. Because the judgment is contrary to law and evidence.

And afterwards, on the 27th day of January, 1849, this order was also entered upon the minutes of said court, which reads in these words and figures, to wit:

M. PHIPPS and M. Rice
vs.
ELIJAH PEALE, trustee, &c. } No. 1705.

The motion herein taken, by defendant, on the plaintiffs, to show cause why a new trial should not be granted, being returnable this day, was argued by Robert Mott, esq., for plaintiff in rule, and S. S. Prentiss, esq., for defendant in rule; and, after argument of counsel, was submitted to the court, who took the same under advisement.

And afterwards, on the 31st January, A. D. 1849, this order was made on the minutes of said court, which reads in the words and figures following, to wit:

M. PHIPPS AND M. RICE
vs.
ELIJAH PEALE, trustee, &c. } No. 1705.

The court having maturely considered the rule taken in the case by the counsel for the defendant on the plaintiffs, to shew cause why a new trial should not be granted, doth now order that the said rule be, and the same is, hereby dismissed, and the new trial refused.

Remittitur.

SAME
vs.
SAME. } No. 1705.

On motion of plaintiffs' counsel a remittitur is entered on the judgment of four hundred and forty-three dollars and seventy-five cents.

And afterwards, to wit, on the 27th March, 1849, came the defendant by his counsel, Robert Mott, esq., and filed in the clerk's office the following:

Petition for writ of error.

U. S. circuit court, 5th circuit, district of Louisiana.

MARTHA PHIPPS AND MARY RICE
vs.
ELIJAH PEALE, trustee, &c., of the Agricultural Bank of Mississippi.

To the judges of the United States' circuit court, for the 5th circuit, within and for the district of Louisiana.

The petition of Elijah Peale, trustee, &c., respectfully sheweth, that a judgment has lately been rendered in this honorable court, in favor of the above named plaintiff, against your petitioner as trustee as aforesaid, for the sum of twenty thousand and fifty-eight dollars, in which said judgment your petitioner is advised there is manifest error, and that your petitioner is aggrieved by said judgment; wherefore your petitioner prays for a writ of error to the Supreme Court of the United States, that the proceedings and judgment of this honorable court may be revised in said Supreme Court, and herewith tender the bond of your petitioner as trustee as aforesaid, with Samuel Nicholson as surety, in the sum of five hundred dollars, for costs according to law.

ROBERT MOTT,
Attorney for petitioner.

Endorsement on petition.

Let the writ of error be issued according to the prayer of the within petition.

New Orleans, March 27th, 1849.

THEO. H. McCALEB,
U. S. Judge.

And on the same day and date of the foregoing petition, this order was entered upon the minutes of said court, which reads in these words and figures, to wit:

M. Rice and M. Phipps
vs.
Elijah Peale, trustee, &c. } No. 1705.

On motion of P. C. Wright, esq., of counsel for defendant, and on filing his petition, representing that said defendant felt aggrieved at the judgment rendered herein on the twenty-fourth of January, 1849, and prayed for a writ of error, returnable to the next term of the Supreme Court of the United States, it is therefore ordered, that a writ of error be, and the same is hereby, allowed to said defendant, returnable to the next term of the Supreme Court of the United States, on his furnishing his bond, with Samuel Nicholson as surety, in the penal sum of five hundred dollars, conditioned according to law.

I, Edmund Randolph, clerk of the circuit court of the United States, in and for the fifth circuit and eastern district of Louisiana, do hereby certify, that the foregoing twenty-two pages contain a full, faithful, true, and complete transcript of the record and proceedings in the case [of] Martha Phipps and Mary Rice vs. Elijah Peale, trustee, &c., number 1705, of the general docket of said court, so far as the same now remains on file and of record.

In testimony whereof I have hereunto set my hand and the seal of [SEAL.] said court, at the city of New Orleans, this 29th day of October, A. D. 1849.

EDMUND RANDOLPH, *Clerk*,
Per J. W. GURLEY, *Deputy Clerk*.

United States of America.

Circuit court of the United States, for the fifth circuit and eastern district of Louisiana.

I, Theodore H. McCaleb, United States judge for the eastern district of Louisiana, do hereby certify, that Edmund Randolph, whose name is signed to the above certificate, as clerk of the circuit court of the United States, for the eastern district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

I further certify, that J. W. Gurley, who signed said Edmund Randolph's name as clerk, was at the time of signing the same the duly appointed and qualified deputy clerk of said Edmund Randolph.

Given under my hand and seal, at New Orleans, in the eastern district of Louisiana, this twenty-ninth day of October, A. D. 1849.

THEO. H. McCALEB. [SEAL.]

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the circuit court of the United States, in and for the 5th circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Phipps and Rice, plaintiffs, to wit: Martha Phipps and Mary Bowers, wife of Charles Rice, by him authorized, &c., and E. Peale, trustee of the Agricultural Bank of Mississippi, defendant, a manifest error hath happened, to the great damage of the said E. Peale, trustee, &c., as by his complainant appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable R. B. Taney, chief justice of the said Supreme Court of the United States, this 22d of October, in the year of our Lord one thousand eight hundred and forty-nine.

ED. RANDOLPH,
Clerk of the U. S. circuit court and eastern district of Louisiana.
Per J. W. GURLEY, *D'y Clerk.*

Citation in error.

The United States of America, to Martha Phipps and Mary Rice, wife of George Bowers, and by him assisted, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the 5th circuit and eastern district of Louisiana, wherein E. Peale is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty-second day of October, in the year of our Lord one thousand eight hundred and forty-nine.

THEO. H. McCALEB, *U. S. Judge.*

Service accepted. New Orleans, October 22, 1849.

S. S. PRENTISS, *Plaintiffs' Att'y.*